D.B.CIVIL SPECIAL APPEAL (W) NO. 587/2007

Shri Gopal Agarwal
v.
State of Rajasthan & anr.

Date of order : 08.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

. . .

Shri Sunil Samdariya for the appellant

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging his dismissal from service in a departmental proceeding. The dismissal was sequel to the joint inquiry held against one S.P.Gupta, Shanker Sukhani and the appellant. The writ petitions of S.P.Gupta and Shanker Sukhani were dismissed by common order on 31.5.2005. Special Appeal preferred by S.P.Gupta being D.B.Civil Special Appeal no. 801/2005 also stands dismissed by order dated 5.2.2007.

Submission of the counsel for the appellant is that the ground of delay was not taken and therefore not considered by the Court in the cases of S.P.Gupta and Shanker Sukhani. It was submitted that not only the proceeding was initiated after long gap of time, but it took eight years to pass final order and, therefore, the dismissal is fit to be set aside on the ground of prejudice which the appellant suffered on account of long delay.

Reliance was placed on State of A.P. v. N.Radhakishan, (1998) 4 SCC 154.

As regards the delay in initiating proceeding, it is not in dispute that the misconduct relates to the period between 1978 – 1983. Charge-sheet was issued on 26.8.1985 and in the circumstances the initiation of the departmental proceeding cannot be said to be belated nor it can be said that the charge had become stale to warrant interference by the Court.

As a matter of fact the question of delay in initiating the proceeding, or concluding the same, is relevant only till the proceeding is pending. After the proceeding culminates i.e. merges in punishment order, the delinquent has to show infirmities in the conduct of the inquiry or the dismissal order. Where the delinquent participates in the inquiry, he cannot at a latter stage take the plea of delay after adverse order is passed. In such case, he would be deemed to have acquiesced in the alleged delay. In the case of N.Radhakishan (supra) the respondent had approached the Court challenging the departmental inquiry on the ground of long lapse of time, and in that context it was held that the delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in

delaying the proceeding. These observations, we are afraid, are not relevant in a case where the delinquent has already suffered dismissal order.

No error in the punishment order has been pointed out. Indeed, we find that different aspects of the case were duly considered by the learned Single Judge and also the Division Bench in the case of S.P.Gupta and Shanker Sukhani. It is not possible to take a different view.

In the result we find no merit in this appeal which is accordingly dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

mathur/